

§ 356.33 Does the Treasury have any discretion in the auction process?

- (a) We have the discretion to:
- (1) Accept, reject, or refuse to recognize any bids submitted in an auction;
 - (2) Award more or less than the amount of securities specified in the auction announcement;
 - (3) Waive any provision of this part for any bidder or submitter; and
 - (4) Change the terms and conditions of an auction.
- (b) Our decisions under this part are final. We will provide a public notice if we change any auction provision, term, or condition.
- (c) We reserve the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time.

§ 356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?

- (a) *General.* If a person or entity fails to comply with any of the auction rules in this part, we will consider the circumstances and take what we deem to be appropriate action. This could include barring the person or entity from participating in future auctions under this part. We also may refer the matter to an appropriate regulatory agency.
- (b) *Liquidated damages.* If you fail to pay for awarded securities in a timely manner, we may require you to pay liquidated damages of up to one percent of the par amount of securities we awarded to you. Our use of this liquidated damages remedy does not preclude us from using any other appropriate remedy.

§ 356.35 Who approved the information collections?

The Office of Management and Budget approved the collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in appendix A of this part under control number 1535–0112.

APPENDIX A TO PART 356—BIDDER CATEGORIES

I. CATEGORIES OF ELIGIBLE BIDDERS

We describe below various categories of bidders eligible to bid in Treasury auctions. You may use them to determine whether we

consider you and other persons or entities to be one bidder or more than one bidder for auction bidding and compliance purposes. For example, we use these definitions to apply the competitive and noncompetitive award limitations and for other requirements. Notwithstanding these definitions, we consider any persons or entities that intentionally act together with respect to bidding in a Treasury auction to collectively be one bidder. Even if an auction participant does not fall under any of the categories listed below, it is our intent that no auction participant receives a larger auction award by acquiring securities through others than it could have received had it been considered one of these types of bidders.

(a) *Corporation*—We consider a corporation to be one bidder. A corporation includes all of its affiliates, which may be persons, partnerships, or other entities. We consider a business trust, such as a Massachusetts or Delaware business trust, to be a corporation. We use the term “corporate structure” to refer to the collection of affiliates that we consider collectively to be one bidder. An affiliate is any:

- Entity that is more than 50-percent owned, directly or indirectly, by the corporation;
- Entity that is more than 50-percent owned, directly or indirectly, by any other affiliate of the corporation;
- Person or entity that owns, directly or indirectly, more than 50 percent of the corporation;
- Person or entity that owns, directly or indirectly, more than 50 percent of any other affiliate of the corporation; or
- Entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation, or of any affiliate of the corporation.

An entity that is more than 50-percent owned as described in this definition is not an affiliate, however, if:

- The purpose of such ownership is to seek a return on investment and not to engage in the business of the entity;
- The owner does not routinely exercise operational or management control over the entity;
- The owner does not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- The corporation has written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent it from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and
- The corporation submits notice and certification to us, as provided in this appendix A.

A corporation that plans to make use of this exception to the definition of “affiliate”